

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF NORTH CAROLINA

MAJOR BOYD WHITLEY,) Case No.: 1:19cv-358
Plaintiff,)
vs.)
SHERIFF VAN SHAW, CAPTAIN M. NESBITT,) RESPONSE TO MOTION FOR
LIEUTENANT W. WALLACE,) DEFAULT JUDGMENT
Defendants.)

The defendants, through counsel, respond to the motion to judgment by default request of the plaintiff (document 13) as follows:

1. The defendants acknowledge that their extension of time to answer should have been filed on July 23, 2019. Their motion for extension is dated that day, so it is apparent that it had been prepared in time.
2. Counsel for defendants left town to go to the County Attorney's conference on July 18, 2019 and then onto a previously scheduled vacation. Before leaving, counsel had not all of the documents pertinent to this case from his clients, which required that the defendants needed an extension of time to answer.
3. Counsel's assistant was supposed to file the extension on July 23, 2019 on the courts system, while counsel was on vacation, but for reasons unknown to counsel, she was having trouble uploading the extension. She apparently was finally able to get it uploaded on July 25, 2019. She was a relatively new employee and had uploaded at least one other document prior to this.
4. After counsel's assistant uploaded the extension, she advised from the docket entry that an extension had been granted until August 23, 2019. Based on this information, counsel prepared an answer, which was filed with the court on August 22, 2019.

5. Counsel's assistant also advised that she mailed a copy of the extension to the plaintiff. She also was responsible for mailing a copy of the answer to plaintiff.

6. Plaintiff has neither alleged nor shown any prejudice to him with reference to the extension of time to answer or the answer.

7. A review of the complaint shows no valid claim against these defendants, and the answer affirms that.

8. This response is filed within the time period set by the court.

WHEREFORE, the defendants, having answered the motion for default of the plaintiff, pray the Court as follows:

1. That the plaintiff's motion be denied; and
2. For such other and further relief as is just.

This 31st day of August, 2019.

/s/ Richard M. Koch
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